

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**
Richmond Division

REDOUANE GOULMAMINE, M.D., and
MIDLOTHIAN REHABILITATION
ASSOCIATES, LLC d/b/a The Petersburg
Spine Center

Plaintiffs,

v.

CVS PHARMACY, INC.,

Defendant.

Case No. 3:15-cv-370 (REP)

CVS PHARMACY INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, and through its counsel Foley & Lardner LLP, defendant CVS Pharmacy, Inc. (“CVS”) hereby moves for partial summary judgment on Counts I and I asserted in the Amended Complaint filed by Plaintiff Redouane Goulmamine, M.D. (“Goulmamine”) and his medical practice, co-Plaintiff Midlothian Rehabilitation Associates, PLLC d/b/a The Petersburg Spine Center (the “Spine Center,” and collectively with Goulmamine, “Plaintiffs”). Plaintiffs assert two counts against defendant CVS: a Count I claim for Defamation, and a Count II claim for Tortious Interference With Business Expectancy. CVS seeks partial summary judgment motion as to matters on which there is no genuine issue as to any material fact and to which CVS is entitled to judgment as a matter of law. *See* Fed. R. Civ. P. 56(a) (allowing for summary judgment on any “claim or defense” or on any “part of each claim or defense”).

First, CVS seeks full summary judgment as to the Spine Center with regards to Count I because there is no evidence whatsoever that the Spine Center was defamed. *See Gazette, Inc. v. Harris*, 229 Va. 1, 37, 325 S.E.2d 713, 738 (1985) (to be actionable, an alleged defamatory statement must be “of or concerning” the plaintiff).

Second, CVS seeks partial summary judgment on Count I as to the alleged defamatory statements in the following paragraphs of Plaintiffs’ Amended Complaint: ¶¶ 14, 15, 23(a), (b), (j), (p), (r), and (s). These statements are non-actionable because: (i) the statements were true; (ii) the statements were opinions (rather than statements of fact); or (iii) the statements have been withdrawn. *See Goulmamine*, 138 F. Supp. 3d at 662 (holding that matters “consist[ing] solely of statements that CVS would no longer fill Goulmamine’s prescriptions” “are not actionable”); *see also id.* at 660 (“CVS properly asserts that statements of opinion do not constitute defamation”).

Third, CVS seeks summary judgment on Plaintiffs’ Count II in its entirety because neither Plaintiffs nor their patients can identify even one person who did not see Goulmamine because of CVS’s alleged statements. *See Goulmamine v. CVS Pharmacy, Inc.*, 138 F. Supp. 3d 652, 672 (E.D. Va. 2015) (“the causation element,” *i.e.*, “lost patients and referrals,” is a necessary element to Plaintiffs’ Tortious Interference With Business Expectancy claim).

Accordingly, for the reasons set forth in CVS’s supporting Brief, CVS respectfully requests the Court enter summary judgment as to these claims.

Dated: July 29, 2016

Respectfully submitted,

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Counsel for Defendant CVS Pharmacy, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2016, I electronically filed the foregoing **CVS PHARMACY INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT** with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following counsel of record for Plaintiffs:

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